IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

Crl.Rev.Pet.No. 2668 of 2007()

CRA.800/05 OF I ADDL.SESSIONS COURT, KOZHIKODE DIVISION
ST.1064/03 OF JFCM-IV, KOZHIKODE

REVN. PETITIONER: APPELLANT/ACCUSED:

RELESH KUMAR, AGED 35 YEARS,
S/O. CHANDRAN, CHENAT HOUSE, NADAKKAVU P.O.,
KOZHIKODE.

BY ADV. SRI.P.R.SREEJITH

RESPONDENTS: RESPONDENTS/COMPLAINANT/STATE:

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1. RAJEEV P.V., S/O. P.V.KRISHNAN,
THOTTAL POYILTHARA PARAMBA, CIVIL STATION P.O.
CHALIKKARA ROAD, KOZHIKODE.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.K.SANEESH KUMAR
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 18/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2668 OF 2007

Dated this the 18th day of July, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T. No.1064/2003 on the file of the J.F.C.M.-IV, Kozhikode challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. The main contention urged by the revision petitioner is that PW1, the complainant, has admitted that

the basis for Ext.P1 cheque is an agreement evidencing the loan transaction and if that agreement is produced, it will definitely reveal that the amount involved is only Rs.5,000/-(Rupees five thousand only) and not Rs.25,000/- (Rupees twenty five thousand only) shown in Ext.P1 cheque. In the first place, the revision petitioner had not even sent a reply to the statutory notice. He did not file any application for causing production of the agreement allegedly in the possession of the complainant. He has a further contention that he had discharged the loan amount of Rs.5,000/-(Rupees five thousand only). If he had discharged the loan amount, he should have demanded the cheque back. But no steps n that behalf have been taken. The courts below did not accept the above defence put forward by the petitioner. I am, therefore, not inclined to entertain this plea and remit the matter to the trial court for giving the petitioner a further opportunity to adduce evidence to substantiate his defence. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to

whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357 (3) Cr.P.C. a sum of Rs.27,000/- (Rupees twenty seven thousand only) within three months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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